

1928
*Apr. 17.

CHARLES DONOHUE (CREDITOR).....APPELLANT;

AND

ERNEST LEFAIVRE (TRUSTEE).....RESPONDENT;

AND

NEUVILLE BELLEAU (DEBTOR).

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

*Leave to appeal—Question of public interest involved—Judgment of the
appellate court on question of facts only—Doubt as to whether finding
of the trial judge should have been reversed.*

When a question of public interest is involved in an appeal to this court,
although the appellate court did not base its judgment upon it, leave
to appeal to this court will be granted, if there is a doubt as to the
sufficiency of the circumstances in the case to overcome, as held by
the appellate court, the finding of the trial judge.

APPLICATION for special leave to appeal under section
74 (3) of the *Bankruptcy Act* from a judgment of the
Court of King's Bench, appeal side, province of Quebec.
Application granted.

St. Laurent K.C. for the application.

Boisvert contra.

LAMONT J.—One of the questions of public interest which,
the appellant contends, is involved in this appeal is:
Whether the law of the province of Quebec which declares
(with certain exceptions not material here) that no trans-

*PRESENT:—Lamont J. in chambers.

fer of shares in a company shall have any effect until it is registered in the transfer register of the company (art. 6003 of *Companies Act*) is applicable in bankruptcy proceedings so as to deprive a creditor, who, for valuable consideration, holds an unregistered transfer of shares, of the benefit of that security.

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—

If this question is involved in the appeal, leave to appeal, in my opinion, should be granted. . The court, however, from which leave to appeal is sought did not base its judgment upon that point. By a majority of three to two the court held that at the time the transfer in question was taken (six years before the debtor became a bankrupt) the debtor was in insolvent circumstances, and was so to the knowledge of the creditor Donohue, who held the unregistered transfer.

The debtor's insolvency, and Donohue's knowledge thereof are questions of fact, and if the finding of fact be upheld the question of law above mentioned would not come before this court for determination.

The trial judge held that the assignments appeared to have been made in good faith for adequate valuable consideration, and that they were not void under any of the sections of the *Bankruptcy Act*. He also held that Donohue had not abandoned his rights in the Russian bonds under the terms of the writing of December 29, 1920; that the assignment of the shares in the Montcalm Land Company was valid as between the parties without registration, and that even if it were true that Belleau (debtor) was not solvent when the assignments were made, his insolvency was not notorious nor known to Donohue and that the transactions between them appeared to be transactions in the ordinary course of business which created no assumption of guilty knowledge by Donohue.

With the trial judge's finding that Donohue had no knowledge of the debtor's insolvency, two judges of the Court of King's Bench agreed. The other three were of opinion that the circumstances raised a presumption of such knowledge on the part of Donohue.

Where a trial judge who has seen and heard both the debtor and the creditor finds as a fact that the creditor at the time of the transfer had no knowledge of the debtor's insolvency, the circumstances, to justify a presumption of

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knowledge sufficient to overcome that finding, must, in my opinion, be strong and conclusive. Being in doubt as to the sufficiency of the circumstances in this case to overcome the finding, and believing the point first above mentioned may possibly come before the court for determination if the appellants are allowed to proceed with their appeal, leave to appeal will be granted.

Application granted.

Solicitors for the appellant: *St.-Laurent, Gagné, Devlin & Taschereau.*

Solicitors for the respondent: *Galipault, Lapointé & Boisvert.*
